

NORTH CAROLINA

BRUNSWICK COUNTY

CHARLES WARREN

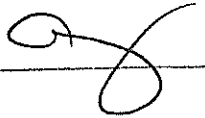
vs

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BRUNSWICK COUNTY, C.S.C.

BY



IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

12 CvS 77

ORDER DENYING PRELIMINARY
INJUNCTION

JOHN MARTIN COOKE, JOHN PHILLIP
NORRIS, SCOTT PHILLIPS and WILLIAM
M. SUE, in their official capacity as Brunswick
County Commissioners, the BRUNSWICK
COUNTY BOARD OF COMMISSIONERS,
and BRUNSWICK COUNTY, a body politic
and corporate

THIS CAUSE COMING ON TO BE HEARD and being heard before the undersigned at the January 30, 2012 session of Civil Superior Court for Brunswick County, the Plaintiff being present and represented by Gary Shipman; the Defendants were represented by County Attorney Huey Marshall. From the pleadings and memoranda submitted the Court makes the following findings of fact for the purposes of this hearing:

1. The Plaintiff and each of the above named individuals are citizens and residents of Brunswick County, North Carolina. Each of the above named individuals, Plaintiff and Defendant, are duly elected members of the Brunswick County Board of Commissioners. Each of these Defendants has been properly served and has notice of these proceedings.

2. The Defendant Brunswick County is a body politic and corporate which is organized and exists under the laws of the State of North Carolina. This Defendant has been properly served and has notice of these proceedings.

3. Plaintiff was appointed by the Board of Commissioners to serve a three year term on the Brunswick County Board of Social Services. At the time of the filing of this action he was serving as Chairperson of said board.

4. No testimony was presented during the hearing in this matter. The Court, for the purpose of this hearing will accept as true the Plaintiff's allegations numbered 10 through 31.

5. Per the allegations of the complaint as well as from the arguments of counsel, the Court finds the Brunswick County Board of Commissioners voted at the December 19, 2011 meeting of the Board to conduct a hearing on January 17, 2012 to determine if Plaintiff should be removed from his position as a member of the board of the Department of Social Services.

6. Plaintiff instituted this action on January 12, 2012, seeking, among other things, a temporary restraining order and injunctions, temporary and permanent preventing defendants from removing plaintiff from the board of the Department of Social Services and a declaratory judgment that Defendants may not remove Plaintiff from the Department of Social Services board prior to expiration of his term.

7. On January 12, 2012 the Honorable Jay D. Hockenbury entered a temporary restraining order enjoining the Defendants from conducting any hearing to determine if Plaintiff should be removed from his position on the board of the Department of Social Services.

8. Plaintiff argues Defendants lack authority especially statutory authority, to remove Plaintiff. Plaintiff further argues Defendants are expressly prohibited from removing Plaintiff from the Department of Social Services Board by N.C.G.S. 153A-176, which provides “[t]he board [of commissioners] may not change the composition or manner of selection of the board of social services” Thus Plaintiff argues any acts by Defendants in furtherance of an effort to remove Plaintiff are ultra vires.

9. No evidence or argument has been offered regarding the sufficiency of the evidence to warrant any removal or potential removal of Plaintiff from the Department of Social Services board by Defendants.

BASED UPON THE FOREGOING FINDINGS OF FACT, the Court concludes as a matter of law:

1. That the Court has jurisdiction over each of the parties and this matter.

2. Plaintiff has failed to establish that he is likely to prevail upon his legal argument that any action by the Defendants to remove him from his position on the Department of Social Services board is without legal authority. The Brunswick County Board of County Commissioners has legal authority to remove its own appointee to the Department of Social Services board for good cause,

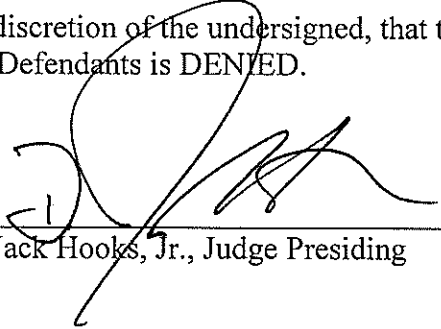
3. N.C.G.S. 153A-76, while prohibiting a change in composition of the board, or a change in the manner of selection of said board, does not prevent removal of an appointed member for good cause by the Board of County Commissioners of Brunswick County.

4. Any such removal, or properly noticed hearing regarding the same is an inherent right of the Defendants as they otherwise lack a remedy to preserve the integrity of the board and serve the interest of the public.

5. Based upon the above findings of fact and conclusions of law, the Court concludes the Plaintiff’s motion for preliminary injunction should be denied. This conclusion is drawn without any finding or conclusion by the Court regarding the sufficiency of the evidence to warrant removal.

IT IS NOW, THEREFORE, ORDERED, in the discretion of the undersigned, that the Plaintiff's motion for preliminary injunction as to these Defendants is DENIED.

This the 1st day of February, 2012.



D. Jack Hooks, Jr., Judge Presiding